



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### *PIEDMONT REGIONAL OFFICE*

*4949A Cox Road, Glen Allen, Virginia 23060*

*(804) 527-5020 Fax (804) 527-5106*

*www.deq.virginia.gov*

Ann F. Jennings  
Secretary of Natural Resources

David K. Paylor  
Director

(804) 698-4000  
1-800-592-5482

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO**

**Surry County  
For**

**Surry County Rescue Squad and Emergency Operations Center  
Permit No. VAR10L769**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and Surry County regarding the Surry County Rescue Squad and Emergency Operations Center site, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters."
2. "2014 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expires on June 30, 2019.

3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to surface waters from any point source; or any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 *et seq.*
9. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics, including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. . . ." 9 VAC 25-870-10.
13. "Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters: (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses; provided that (a) an alteration of the

physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners is sufficient to cause pollution; (b) the discharge of untreated sewage by any owner into state waters; and (c) contributing to the contravention of standards of water quality duly established by the board, are "pollution." Va. Code § 62.1-44.3.

14. "Property" or "Site" means the tract of land in Surry County, Virginia located at 1239 Colonial Trail West, Virginia, from which discharges of stormwater associated with construction activity occur.
15. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
16. "Registration Statement" means a registration statement for coverage under the 2014 Permit.
17. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
18. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
19. "Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways, and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
20. "Stormwater management plan" means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.
21. "SWPPP" means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.
22. "Surry County" means a political subdivision of the Commonwealth of Virginia. Surry County is a "person" within the meaning of Va. Code § 62.1-44.3.
23. "Va. Code" means the Code of Virginia (1950), as amended.

24. "VAC" means the Virginia Administrative Code.
25. "VESCP" or "Virginia Erosion and Sediment Control Program" means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement where authorized.
26. "VESCP authority" means an authority approved by the Board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the Department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 62.1-44.15.2-5102.
27. "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 *et seq.*) of Chapter 3.1 of Title 62.1 of the Va. Code.
28. "VPDES" means Virginia Pollutant Discharge Elimination System.
29. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
30. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
31. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 *et seq.*

**SECTION C: Findings of Fact and Conclusions of Law**

1. Surry County is the owner and operator of the Site located at 1239 Colonial Trail West in Surry County, Virginia, from which stormwater associated with construction activity was discharged.
2. DEQ is the VSMP authority for the Property
3. Surry County began land disturbing activities without coverage under the 2014 Permit.
4. The receiving water is the Johnchecohunk Swamp-Cypress Swamp-Blackwater River. During the 2016 Water Quality Assessment 305(b)/303(d) Integrated Report, the Johnchecohunk Swamp was assessed an impaired water and considered a Category 5D waterbody for exceedance of bacteria, specifically E. coli. The receiving water is a surface water located wholly within the Commonwealth and is a “state water” under the State Water Control Law. There is no reported impact to state waters.
5. On October 19, 2018, Department staff conducted an inspection of the Site. DEQ staff observed land-disturbing activities equaling more than one acre of land disturbance (approximately 4.0 acres of disturbed area was observed on a 6.16 acre parcel) at the Site. Surry County did not obtain VSMP authority approval to begin land disturbance and did not receive 2014 Permit coverage for discharges of stormwater from construction activities, and no other certificate or permit was issued for the discharge of stormwater from construction activities at the Site.

Pursuant to Va. Code § 62.1-44.15:34(A), “A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance.”

Va. Code §§ 62.1-44.15:24 and -44.15:34 define “land-disturbing activity” means, “a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation.”

6. During the October 19, 2018 inspection, a SWPPP was not developed and not available on-site for review. An approved Stormwater Management Plan (“SMP”) and Erosion and Sediment Control Plan (“ESC”) for the Site were not approved at the time of the inspection.

9 VAC 25-870-54(A) states “A stormwater pollution prevention plan (SWPPP) shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection E of this section.”

9 VAC 25-870-54(B) states, “an erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the VESCP authority or the department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.”

9 VAC 25-870-54(C), "a stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VSMP authority."

9 VAC 25-870-54(D) states, “A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.

9 VAC 25-870-54(G) states, “The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.”

7. During the October 19, 2018 inspection ESC and SWM controls were not installed or in use during the initial stages of land disturbance. Surry County failed to install sediment trapping measures as a first step in land disturbing activity.

9 VAC 25-840-40(4) states: “Sediment basins and traps, perimeter dikes, sediment barriers and other measures intended to trap sediment shall be constructed as a first step in any land-disturbing activity and shall be made functional before upslope land disturbance takes place.”

8. On February 11, 2021 and January 6, 2022, DEQ staff performed inspections and observed areas where mature, uniform and permanent vegetative cover was not established. In addition, rill erosion was observed on the slope of the western permanent SWM/BMP pretreatment fore-bay,

9 VAC 25-840-40(3) states: “A permanent vegetative cover shall be established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform, mature enough to survive and will inhibit erosion.”

9 VAC 25-840-40(5) states: “Stabilization measures shall be applied to earthen structures such as dams, dikes and diversions immediately after installation.”

9. On February 11, 2021 and January 6, 2022, DEQ staff performed inspections and observed inadequate protection of the inlet located in the stormwater conveyance channel (Ditch “A”) south of the parking area.

- 9 VAC 25-840-40(10) states: "All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment."
10. On December 19, 2018, DEQ issued NOV No. 2019-05-PRO-204 to Surry County for the unpermitted land disturbing activities observed during the October 19, 2018 inspection. Surry County was provided constructive notice by inspection reporting of the violations observed during the February 11, 2021 and January 6, 2022 inspections.
  11. On January 4, 2019, ET Gresham Co, Inc., on behalf of Surry County, received coverage under the 2014 Permit for a 6.16 acre development (VAR10L769).
  12. On January 10, 2019, DEQ staff discussed the Notice of Violation with Surry County and DEQ Stormwater staff.
  13. Based on the results of DEQ inspections occurring on October 19, 2018, the Board concludes that Surry County violated Va. Code § 62.1-44.15:34 (A), 9 VAC 25-870-310(A), 9 VAC 25-870-54 (A, B, C, D, G), 9 VAC 25-840-40 (3)-(5) and (10) as described above.
  14. Land disturbing activities and development of the Site is complete and ET Gresham Co, Inc., on behalf of Surry County, is pursuing permit termination.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Surry County and Surry County agrees to:

1. Pay a civil charge of **\$6,738.00** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

If the Department is required to refer collection of moneys due under this Order to the Department of Law, Surry County shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Surry County and for good cause shown by Surry County, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Surry County admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Surry County consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Surry County declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Surry County to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Surry County shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Surry County shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Surry County shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;



- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Surry County. Nevertheless, Surry County agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Surry County has completed all of the requirements of the Order;
  - b. Surry County petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Surry County.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Surry County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Surry County and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Surry County certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Surry County to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official or officer of Surry County.
- 14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no

representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Surry County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

James J. Golden, Regional Director  
Virginia Department of Environmental Quality  
Piedmont Regional Office

------(Remainder of Page Intentionally Blank)-----

Surry County voluntarily agrees to the issuance of this Order.

Date: 3/30/22 By: Melinda D. Rollins,  
 \_\_\_\_\_  
 Signing Official Owner / Principal

Commonwealth of Virginia

City/County of Surry

The foregoing document was signed and acknowledged before me this 30<sup>th</sup> day of

March, 2022, by Melissa D. Rollins who is

County Administrator of Surry County, on behalf of the company.

Debra L. Dase  
Notary Public

7804286  
Registration No.

My commission expires: 7/31/2022

Notary seal:

